

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Tessa Yesselman	Team: Squad #12	CCRB Case #: 201701980	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 03/08/2017 2:46 PM	Location of Incident: Morgan Avenue Subway Station	Precinct: 90	18 Mo. SOL 9/8/2018	EO SOL 9/8/2018	
Date/Time CV Reported Wed, 03/08/2017 5:01 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 03/15/2017 12:15 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Ryan Gallagher	17402	960566	TB DT33
2. POM Raphael Sylvestre	01629	912084	TB DT33

Officer(s)	Allegation	Investigator Recommendation
A.POM Ryan Gallagher	Force: Police Officer Ryan Gallagher used physical force against § 87(2)(b)	
B.POM Raphael Sylvestre	Force: Police Officer Raphael Sylvestre used physical force against § 87(2)(b)	
C.POM Raphael Sylvestre	Abuse: Police Officer Raphael Sylvestre threatened § 87(2)(b) with the use of force.	
D.POM Raphael Sylvestre	Abuse: Police Officer Raphael Sylvestre interfered with § 87(2)(b)'s use of a recording device.	

### Case Summary

On March 8, 2017, § 87(2)(b) filed this complaint with IAB (Log No. 2017-8794) (**01 Board Review**), on behalf of her son, § 87(2)(b) -old § 87(2)(b) and his girlfriend, § 87(2)(b) -old § 87(2)(b). This complaint was received by the CCRB on March 15, 2017.

On March 8, 2017, at approximately 2:46 PM, § 87(2)(b) and § 87(2)(b) entered into the Morgan Avenue Subway Station on the L line in Brooklyn. § 87(2)(b) and § 87(2)(b) doubled up in the turnstile, and entered into the subway station on a single swipe of § 87(2)(b)'s metro card, and were stopped by Police Officer Ryan Gallagher, and Police Officer Raphael Sylvestre, both of Transit District 33. PO Gallagher asked § 87(2)(b) and § 87(2)(b) for their identification, and both complied with his instruction. PO Gallagher ran § 87(2)(b) and § 87(2)(b)'s names, and discovered that § 87(2)(b) had an active I-Card. PO Gallagher informed PO Sylvestre of his discovery, and both officers instructed § 87(2)(b) to put his arms behind his back. § 87(2)(b) refused to put his arms behind his back, and asked the officers why he was being arrested, while the officers continued to instruct § 87(2)(b) to put his arms behind his back. PO Gallagher and PO Sylvestre leg swept § 87(2)(b) to the ground (**Allegation A, Allegation B**). Once § 87(2)(b) was on the ground, PO Sylvestre pointed his OC Spray at § 87(2)(b)'s face and told him that if he did not give the officers his arms, he would be sprayed (**Allegation C**). § 87(2)(b) allegedly attempted to record § 87(2)(b)'s interaction with the officers, and PO Sylvestre allegedly told her that she was not allowed to record (**Allegation D**).

§ 87(2)(b) was arrested and charged with § 87(2)(b)

(**02 Board Review**).

There is no video footage regarding this incident.

### Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- As of May 9, 2017, a FOIL request to the Office of the Comptroller is pending.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been party (**08 Board Review**).
- This is the first CCRB complaint to which § 87(2)(b) has been party (**09 Board Review**).
- PO Gallagher has been a member of service for one year, and has no previous allegations.
- PO Sylvestre has been a member of service for 23 years and has one previous allegation, and no substantiations. § 87(2)(g)

## Findings and Recommendations

### **Allegation A –Physical Force: Police Officer Ryan Gallagher used physical force against**

§ 87(2)(b)

### **Allegation B- Physical Force: Police Officer Raphael Sylvestre used physical force against**

§ 87(2)(b)

It is undisputed that § 87(2)(b) and § 87(2)(b) committed fare evasion as they entered into the Morgan Avenue L-train station, were stopped by PO Gallagher and PO Sylvestre, and promptly provided their identification to PO Gallagher, once asked. It is further undisputed that, once § 87(2)(b) was informed he was under arrest, that he verbally refused to put his arms behind his back, and held his arms in such a way as to prevent the officers from gaining control of them, and was subsequently leg swept and brought to the ground by PO Gallagher and PO Sylvestre.

§ 87(2)(b) stated that he held his arms straight out at shoulder length.

Prior to informing § 87(2)(b) that he was under arrest, PO Gallagher stated that he ran § 87(2)(b)'s name and saw that he had an active I-Card. PO Gallagher thought that the I-Card may have been for a past assault. PO Gallagher informed PO Sylvestre that § 87(2)(b) had an active I-Card. PO Sylvestre stated that he did not know to what the I-Card pertained.

PO Gallagher and PO Sylvestre both stated that § 87(2)(b) held his arms in front of his body. PO Gallagher stated that while § 87(2)(b) held his arms in front of his body, he told the officers not to “fucking” cuff him. PO Sylvestre stated that § 87(2)(b) told the officers not to cuff him, and to call his mother. PO Gallagher and PO Sylvestre both stated that they attempted to pull § 87(2)(b)'s arms behind his back, but did not attempt to gain compliance using any other method before forcefully taking him to the ground.

After § 87(2)(b) was handcuffed and stood up, PO Gallagher searched him, and recovered a gravity knife from his front pants pocket.

According to NYPD Patrol Guide Procedure 221-02, an officer may apply no more than the reasonable force necessary to gain control of an arrestee (**06 Board Review**).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

### **Allegation C- Abuse of Authority: Police Officer Raphael Sylvestre threatened** § 87(2)(b) **with the use of force.**

It is not in dispute that § 87(2)(b) was forcefully taken to the ground. It is not in dispute that once § 87(2)(b) was on the ground, he continued to verbally tell the officers he was not going to give them his hands, and that he moved his body to prevent the officers from gaining control of his arms. It is not in dispute that § 87(2)(b) was not flailing his arms or kicking his legs, or otherwise attempting to make contact with the officers, or attempting to flee. It is not in dispute that PO Sylvestre held his O.C. spray directly to § 87(2)(b)'s face while he was on the ground.

PO Sylvestre stated that he held his O.C. spray “directly” to § 87(2)(b)'s face, nearly making contact with § 87(2)(b)'s face, because the officers were “outnumbered” by the people in the train station, and that he opted to take his O.C. spray out because “kicking and punching” are “old school” methods.

This incident took place inside of a subway station. PO Gallagher and PO Sylvestre described a steady stream of people passing by because it was around the time of school dismissal, but stated that while some of these passersby paused to look at what was going on, that a crowd did not form, and that none of the individuals attempted to intervene.

NYPD Patrol Guide Procedure 221-07 (07 Board Review) states that O.C. spray should be held “at a minimum distance of three feet, and only in situations when the uniformed member of service reasonably believes that it is necessary to:

- a. Gain or maintain control of persons who are actively resisting arrest or lawful custody or exhibiting active aggression
- b. Prevent individuals from physically injuring themselves, members of the service, or other persons
- c. Establish physical control of a subject attempting to flee from arrest or custody
- d. Establish physical control of an emotionally disturbed person (EDP)
- e. Control a dangerous animal, by deterring to prevent injury to persons or animals present.”

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation D- Abuse of Authority: Police Officer Raphael Sylvestre interfered with § 87(2)(b)'s use of a recording device.**

§ 87(2)(b) (04 Board Review) stated that she attempted to record § 87(2)(b)'s interaction with PO Gallagher and PO Sylvestre on her cell phone, but that PO Sylvestre told her to put her phone away because she was not “allowed” to record.

§ 87(2)(b) (03 Board Review) stated that § 87(2)(b) later told him that PO Sylvestre had told her she was not allowed to record. § 87(2)(b) did not hear PO Sylvestre make the statement.

PO Sylvestre (**06 Board Review**) stated that he did not recall § 87(2)(b) attempting to record, and that he did not tell her she was not allowed to record. PO Sylvestre stated that he did not recall any verbal interaction with § 87(2)(b) but that if she had gotten too close, he would have told her to back away. PO Sylvestre did not hear PO Gallagher tell § 87(2)(b) that she was not allowed to record.

PO Gallagher (**05 Board Review**) stated that he did not hear PO Sylvestre tell § 87(2)(b) that she was not allowed to record, and stated that he did not tell § 87(2)(b) she could not record.

§ 87(2)(g)

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Squad: 12

Investigator:	_____	<u>Tessa Yesselman</u>	<u>May 16, 2017</u>
	Signature	Print	Date
Squad Leader:	_____	<u>Nicholas Carayannis</u>	<u>May 16, 2017</u>
	Signature	Title/Print	Date